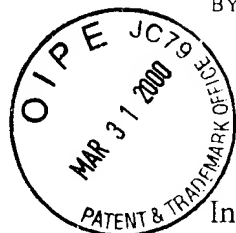


I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON, D.C. 20231, ON THE DATE INDICATED BELOW

BY: Martha D. Heintz Date: March 24, 2000



**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re: Patent Application of  
Christopher J. Horvath

Application No.: Not Yet Assigned

Filed: March 17, 2000

For: CD18-BINDING ANTIBODIES  
AND USE THEREOF FOR  
INHIBITION AND ALLEVIATION  
OF STENOSIS-RELATED  
SYMPTOMS AND DISORDERS

Examiner:  
Not Yet Assigned

Attorney Docket No.  
10147-22  
(MBIO2000-131)

**PETITION**  
**PURSUANT TO 37 C.F.R. § 1.10(d)**

The Applicant respectfully petitions to have the date March 17, 2000 accorded as the filing date of the above-referenced U.S. Patent application, on account of an error or omission on the part of the U.S. Postal Service.

**Relevant Facts**

The above-referenced patent application was hand-carried by the undersigned practitioner to the U.S. Post Office at 30th and Market Streets, Philadelphia, PA 19104, and was deposited with a postal clerk therein prior to midnight on March 17, 2000. On account of one or more of

- inefficiency on the part of the U.S. Post Office or its employees and
- deliberate inaction on the part of the particular postal clerk with whom the application was deposited,

the Express Mail package ("Post Office to Addressee") which contained the patent application was not post-marked until after midnight (i.e. on March 18, 2000). Thus, the date '3/18/00' appears on the Express Mail receipt. The above-referenced patent

application will evidently be afforded a filing date of March 18, 2000 unless this Petition is granted.

A detailed "Statement of Facts" relating to the filing of this patent application accompanies this petition. Also accompanying this petition is an "Express Mail Tracking & Delivery Confirmation" print-out, which indicates that the Express Mail package containing the patent application was logged in at the 30th Street Post Office at "March 18 12:01 am".

The Applicant's representative has contacted the Postmaster of the 30th Street Post Office, explained the circumstances surrounding mailing of the package, and asked that the filing date be corrected. The Postmaster has refused to change the postmarked date of the package.

In accordance with 37 C.F.R. § 1.10(d), the undersigned attests that:

(1) This petition is being filed promptly after the (undersigned) person who deposited the patent application with the U.S. Postal Service became aware that the Office will likely accord a filing date to this application based on an incorrect entry by the U.S. Postal Service. The alleged error or omission by the U.S. Postal Service occurred on Friday, March 17, 2000. On the following business day, Monday, March 20, 2000, the undersigned and his colleagues discussed the alleged error or omission, and attempted to contact the Postmaster. On Tuesday, March 21, the undersigned and his colleagues received word from the Postmaster that the U.S. Postal Service would not remedy the alleged error or omission, and consulted with a representative of the applicant's employer. On Wednesday, March 22, 2000, the undersigned investigated how the filing date might be corrected in the U.S. Patent & Trademark Office. On Thursday, March 23, 2000, this Petition was prepared and discussed with a representative of the applicant's employer. On Friday, March 24, 2000, this Petition was revised and mailed to the U.S. Patent & Trademark Office. Thus, this petition is being promptly filed.

(2) In conformity with M.P.E.P. § 513, the number of the "Express Mail" mailing label was placed on the cover sheet which accompanied the above-referenced patent application, as seen on the copy of the cover sheet included with the accompanying "Statement of Facts".

(3) It is asserted that the accompanying "Statement of Facts" and "Express Mail Tracking & Delivery Confirmation" establish that the above-referenced patent application was deposited by the undersigned prior to midnight on March 17, 2000, and that the application should be afforded a filing date of March 17, 2000. The undersigned notes that, in conformity with 37 C.F.R. § 1.10(d)(3), the "Statement of Facts" was written on Monday, March 20, 2000 (the first business day following the day upon which the alleged error or omission by the U.S. Postal Service occurred), and believes that the "Express Mail Tracking & Delivery Confirmation" is updated on at least a daily basis by the U.S. Postal Service and was therefore also created by at least the first business day following the day upon which the alleged error or omission by the U.S. Postal Service occurred.

Please charge the appropriate petition fee under 37 C.F.R. § 1.17(h), believed to be \$130.00, and any additional fees, or credit any overpayment, to Deposit Account 50-1017. One additional copy of this Petition is enclosed for accounting purposes.

For the above reasons, the undersigned petitions that the above-referenced U.S. patent application be accorded the filing date **March 17, 2000**.

March 24, 2000  
(Date)

Respectfully submitted,  
**Christopher J. Horyath**

BY: 

**GARY D. COLBY, Ph.D., J.D.**

Registration No. 40,961

**AKIN GUMP STRAUSS HAUER & FELD LLP**

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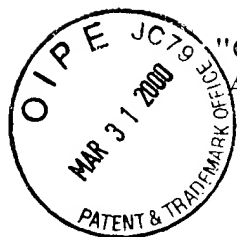
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E-Mail: gcolby@akingump.com

Enclosures: Statement of Facts Surrounding Filing of U.S. Patent Application...  
Express Mail Tracking & Delivery Confirmation

**Statement of Facts Surrounding Filing of U.S. Patent Application Entitled**



**"CD18-BINDING ANTIBODIES AND USE THEREOF FOR INHIBITION AND ALLEVIATION OF STENOSIS-RELATED SYMPTOMS AND DISORDERS"**

**(Attorney Docket No. 10147-22)**

(15) 600  
3-23-00

1. I am Gary D. Colby, an attorney having PTO Registration number 40,961.
2. On Friday, March 17, 2000, I carried to the U.S. Post Office at 30th and Market Streets in Philadelphia PA (zip code 19104) an Express mail (post office to addressee) package which contained, among other papers, the U.S. patent application having the above-referenced title and docket number, and a cover sheet which listed the contents of the package. The Express Mail label affixed to the package had designation number "EL399098346US".
3. A true copy of the cover sheet mentioned in item 2 accompanies this page and was signed by me on March 17, 2000.
4. The package mentioned in item 2 contained every item listed on that cover page, including
  - 79 pages of patent specification
  - a 2-page non-executed declaration
  - 14 sheets of drawings.
5. As indicated on the copy of the cover sheet mentioned in item 3, the cover sheet indicated that the Express Mail label corresponding to the contents listed therein is "EL399098346US".
6. A true copy of the Express Mail receipt corresponding to the package mentioned in item 2 accompanies this page. The Express Mail receipt bears the designation "EL399098346US" and a postmark dated March 18, 2000.
7. I have personally carried numerous articles to the Post Office mentioned in item 2 for filing between 11:00 p.m. and midnight. The amount of time I have had to wait in line before being served by a postal clerk during this period has rarely exceeded 5 minutes. To the best of my recollection, such time has never before exceeded 15 minutes.
8. On the night of March 17, 2000, I arrived at the Post Office mentioned in item 2 no later than 11:40 p.m. for the purpose of depositing the package mentioned in item 2.
9. I presented the package mentioned in item 2 to a postal clerk (the particular clerk evidently being identified by the postmark mentioned in item 6) at 11:58 p.m., according to the digital time readout on the clerk's work station. I immediately informed the clerk that it was critical that the package be postmarked before midnight.
10. The postal clerk weighed the package, typed, and studied his work station in a manner that seemed to me to be excessively slow. It is my opinion, based on the actions and the evident

demeanor of the clerk, that the clerk deliberately delayed processing the package until after midnight.

11. The postal clerk indicated that he had not postmarked the package until after midnight, and that the package would therefore be postmarked on March 18, 2000.

12. I immediately protested, and asked that the postal clerk indicate in the corresponding block on the face of the Express Mail receipt that the package had been presented to him prior to midnight on March 17, 2000. The clerk refused.

13. I requested that the clerk sign or "at least initial" a statement that I wrote on the face of the filing receipt. That statement read "Gary D. Colby deposited this package in the U.S. Post Office at 30th Street Post office on March 17, 2000 \_\_\_\_\_ initials", and is visible on the copy of the Express mail receipt mentioned in item 6. I offered to show the clerk a driver's license in order to confirm my identity. The clerk refused to sign or initial the receipt.

14. I asked the clerk to refer me to a supervisor. The clerk initially indicated that there was no supervisor available. When verbally pressed by me, the clerk indicated that I should ring the bell at a designated window number (window number 54, to the best of my recollection). I rang the bell at the indicated window. The postal worker at that location (evidently a postal department which deals with rented boxes) referred me to her supervisor, who indicated that there were no supervisors available for the postal clerks at that time, and that he had no supervisory authority over them. He suggested that I speak with the clerk again.

15. I once again spoke with the postal clerk who received the package. I again requested that he either indicate on the face of the Express Mail receipt or on the statement that I had written thereon that the package had been deposited on March 17, 2000. The clerk again refused.

16. I thereafter asked the clerk how he believed I might be able to resolve the situation. The clerk indicated that he believed that there was nothing that could be done.

17. Thereupon, I left the Post Office.

18. I have related this experience to at least three of my colleagues (Kathryn Doyle - Reg. No. 36,317; Al Nadel - Reg. No. 27,363; and William Schwarze - Reg. No. 25,918) upon returning to my office today, Monday, March 20, 2000, and am preparing this Statement of Facts as a record of the events that have occurred with regard to this filing.

19. It is my intention that we will contact the Postmaster of the Philadelphia Post Office at 30th and Market Street in order to obtain a corrected Express Mail deposit date. Should the Postmaster not agree to do so, we will attempt to have the U.S. Patent & Trademark Office accord us the proper filing date by whatever means are available.

20. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are



punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon. As a practitioner registered to practice before the U.S. Patent & Trademark Office, I furthermore realize that submitting knowingly false statements to the U.S. Patent & Trademark Office can jeopardize my registration to practice.

March 20, 2000

Date

Gary D. Colby, Reg. No. 40,961